(3)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR

W.P. No.2474 of 2001

SMT. SHANTIDEVI AGRAWAL Wife of Shri Omprakash Agrawal, aged about 46 years, Resident of Ramsagar Para, Raipur

PETITIONER

VERSUS

1. **STATE OF CHHATTISGARH** through the Collector, Raipur
2. **RAIPUR MUNICIPAL CORPORATION** A Body Corporate Constituted under the relevant Provisions of M.P. Municipal Corporation Act, 1956 having its Office at Malviya Road, Raipur through the Commissioner of Raipur
3. **THE COMMISSIONER,** Raipur Municipal Corporation, Malviya Road, Raipur.

RESPONDENTS

R. No. 2426 Presented by Shri B.L. Sharma dated 23/11/01

WRIT PETITION UNDER ARTICLE 226 & 227 OF THE CONSTITUTION OF INDIA FOR THE ISSUANCE OF WRITS IN THE NATURE OF PROHIBITION MANDAMUS ETC. AND/OR FOR ORDER(s) AND/OR FOR THE DIRECTIONS IN THE NATURE OF THE WRITS

XI-HC-22

(69)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक W.P.No.2474/ सन् 2001

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

07.12.2001

Shri B.P.Sharma, learned counsel for the petitioner.

Shri Gautam Bhaduri, learned Govt. Advocate for the respondent No.1 / State.

Shri Manindra Shrivastava, learned counsel for the respondents No.2 and 3.

Heard finally at motion with consent.

2) Counsel for the petitioner submits that on the ground of alleged illegal construction of building and other things demolition is being apprehended and directed. It is also contended that in certain cases offences have been compounded and in some cases applications for compounding have been made. Counsel for the State and the respondents oppose the petition and have filed the return and in the cases where returns are not filed, request has been made for adopting the return already filed. It is pointed out that this Court has passed detailed order in Writ Petition No.716/2001, which is registered as Citizen of Bilaspur v. Municipal Corporation, Bilaspur. A copy of the said order has been placed on record.

3) Counsel for the Corporation / State and other authorities / respondents pointed out that because of illegal construction / encroachment in violation of building laws difficulties and problems have arisen such as pollution of air and water, obstruction in cleaning of drains, stoppage of flow of water, denial of

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W.P. No:2474/

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित – 2 –	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

civic amenities and damage of roads. It also causes traffic obstruction and hindrance in smooth traffic. This Court had passed orders from time to time on 17.08.2001 and on 28.09.2001.

4) The Apex Court in Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan and others (AIR 1997 SC 152) has dealt with the matter in great detail. The judgement has been read in extenso.

5) Counsel for the respondents pointed out that some of the petitions have been filed by the petitioners merely on apprehension. The respondents / Corporation and authorities have inspected spot and also made enquiries regarding the construction.

6) Counsel for the respondents / Corporation further submitted that the petitioners have rushed to the High Court though disputed questions of facts are involved and each case rests on determination of those facts. In certain cases where notices are not served they are premature as well as in other cases the Corporation and the authorities requiring demolition will serve notice to the petitioners and in those cases where notices have already been served. The petitioners may now file reply supported by affidavits and documents etc., which will be considered and decided on its own merit in accordance with law. If the petitioners give in writing with affidavit on points specified that they are desirous of being heard, they shall also be heard by the Corporation or by the authority concerned as far as possible.

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आदेश पत्रक

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विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

7) We have considered the submissions made by rival parties gone through the record and the order sheets have been recorded in the similar cases from time to time so as to provide opportunity to all parties to place their respective viewpoint. It is not necessary to reiterate them here once again as they form part of record. In our opinion questions sought to be raised in the petitions are disputed questions of fact, which cannot be gone into by this Court in writ jurisdiction.

8) Having thus considered the totality of the circumstances we direct as under:

a) Wherever there is apprehension and notice has not been issued by the Corporation or the concerned authority notice shall be issued and opportunity shall be given to file reply and after reply is filed the matter shall be considered and decided on its own merits in accordance with law.

b) Let reply be filed on or before 31st December, 2001.

c) Till the notices are served and reply, if any, is filed and decided status quo as on today i.e. 07.12.2001 shall be maintained by the parties.

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

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आदेश पत्रक

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	9) With these observations and directions this petition is disposed of. Original documents filed by the parties may be returned after the photocopies are filed on record. The security, if deposited, be refunded to the petitioner as per rules. Certified photocopy as per rules. Sd/- Chief Justice Sd/- Fakhruddin Judge	